



Susan S. Coffey, CPA, Senior Vice President  
Member Quality & International Affairs  
American Institute of CPAs  
1211 Avenue of the Americas, 19th Floor  
New York, NY 10036-8775

March 1, 2011

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

*Via Electronic Mail*

**Re: File Number S7-40-10, Conflict Minerals**

Dear Ms. Murphy:

The American Institute of Certified Public Accountants (AICPA) is pleased to comment on the above-referenced proposed rule. The AICPA is the national, professional association of CPAs, with over 370,000 members worldwide; including CPAs in business and industry, public practice, government, education, student affiliates and international associates.

The Proposed Rule, which responds to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank or the “Act”), would impose new reporting requirements on issuers concerning the use of conflict minerals and whether they originated in the Democratic Republic of the Congo (DRC) or an adjoining country. We commend the SEC and its staff for their efforts in responding to this statutory mandate and we recommend that the Commission’s final rule consider the practicability of the new requirements, as well as the needs of investors.

While we recognize the SEC is seeking feedback on all aspects of the proposed rule, our specific comments below focus on the proposed requirements for an independent private sector audit of the Conflict Minerals Report (or the Report).

**Nature and Objective of the Audit**

Our understanding of Step 3, discussed under *Conflict Minerals Report’s Content and Supply Chain Due Diligence* in the proposing release for the rule, would require an independent private sector audit of the Conflict Minerals Report. However, it is unclear what the objective and subject matter of the audit would be.

Specifically, it is unclear from the proposed rule whether the objective of the audit would be to issue an opinion on the content of the Report (and if so, to what extent) or, for example, an opinion on the procedures and controls to support management’s assertions

in the Report. We have identified several possible audit objectives, which are not mutually exclusive, as follows:

- An audit of whether management's description of procedures and controls performed in their due diligence process are fairly described in the Report. This audit objective would provide users with an opinion as to the procedures and controls management had in place without providing an opinion as to the appropriateness (design effectiveness) of their due diligence process.
- An audit of whether the due diligence process (procedures and controls) designed by management and described in the Report was in conformity with a recognized standard of due diligence. This audit objective would provide users with an opinion as to the design of procedures and controls used by management against a standard of due diligence accepted by the Commission. It would not provide an opinion as to the effectiveness of the procedures to achieve a certain objective.
- An audit of whether the due diligence process described in the Report was designed against a standard of due diligence and whether those procedures and controls were effective in achieving certain control objectives asserted in the Report.
- An audit of whether management's assertions regarding the source and chain of custody of the conflict minerals are appropriate. This audit objective would provide an opinion as to whether management's assertions (whether conflict minerals are DRC conflict free or are not conflict free) are fairly presented in the Report.
- An audit of whether the products included in or excluded from the Report were appropriate.

We believe that the latter three audit objectives would be the most challenging and costly options as the evidence in certain situations may not be with the Company subject to the audit but with other companies within the supply chain. As a result, we encourage the SEC to consider the cost/benefit relationships related to these audit objectives.

Regardless of the audit objective selected by the SEC, we recommend that the final rule clearly state the objective of the audit and the subject matter to be audited.

### **Applicable Professional Standards**

We noted in the proposing release that staff of the GAO has informed the SEC of their preliminary view that no new standards need to be promulgated, and the audit of a Report could be performed under either the provisions for Attestation Engagements or Performance Audits within Government Auditing Standards (GAGAS). It is important to note that these two approaches are very different in terms of audit scope and reports.

### *Attestation Audit or Examination*

Attestation standards have a standardized reporting structure which would allow for greater comparability among audit reports. Additionally, an examination or audit performed under the attestation standards is a reasonable assurance engagement meaning that the requirements for the auditor to obtain sufficient appropriate evidence are essentially the same as in an audit of historical financial statements. An attestation engagement, however, requires suitable evaluation criteria as the SEC highlighted in footnote 101 in the proposing release. The GAGAS standards for attestation incorporate the AICPA general standard for criteria: "The practitioner [auditor] must have reason to believe that the subject matter is capable of evaluation against criteria that are suitable and available to users."

### *Performance audit*

A performance audit is not intended to be an attestation engagement. Although GAGAS indicates that a performance audit provides reasonable assurance that the auditor has obtained sufficient, appropriate evidence to support the conclusions reached, the performance audit report is less standardized than a report under the attestation standards. This is because a performance audit provides significant flexibility with regard to the conclusions that may be subject to the audit. This might allow the auditor to provide further explanations in the auditors' report than under the attestation standards; however, comparability among reports would be reduced.

Because these two "audits" are very different in terms of their scope and report, we recommend that the SEC's final rule be clear which type of audit is acceptable and who may perform these audits.

### **Suitability and Availability of Criteria**

The third general standard of the AICPA Attestation Standards, which is the foundation of the attestation standards in GAGAS, requires that the auditor have reason to believe that the assertion or subject matter (upon which the auditor is requested to opine) is capable of evaluation against criteria that are suitable and available to users.

Criteria are the standards or benchmarks used to measure and present the assertion or subject matter and against which the auditor evaluates the subject matter or assertion. Ordinarily, criteria that are established or developed by groups composed of experts that follow due process procedures, including exposure of the proposed criteria for public comment, are considered to be suitable.

According to AICPA Professional Standards, suitable criteria are (1) objective or free from bias, (2) measurable, (3) sufficiently complete so that relevant factors are not omitted, and (4) relevant. In addition, criteria need to be made available to users (and may be done in various ways). Otherwise, if criteria are available only to specified parties, the auditor's report is required to be restricted to those parties who have access to the criteria.

The issue of appropriate criteria described above for attestation standards also exists for performance audits. Although not highlighted in footnote 101 to the proposed rule, paragraph 7.37 of GAGAS addresses the need for criteria in performance audits as follows:

“Auditors should identify criteria. Criteria represent the laws, regulations, contracts, grant agreements, standards, measures, expected performance, defined business practices and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding the findings, conclusions and recommendations included in the report. Auditors should use criteria that are relevant to the audit objectives and permit consistent assessment of the subject matter.”

Regardless of the type of audit or audit objective set forth in the final rule, we believe that it is imperative that the SEC, along with the GAO and Department of State as appropriate, identify a comprehensive framework of criteria that would aid both the issuer and the auditor in their public protection roles. While the criteria would differ depending on the audit objective selected by the SEC, suitable criteria are essential for the measurement and presentation of consistent information by issuers. Suitable criteria are also essential so an auditor can attest to the issuer’s measurement and presentation. Such criteria should be well understood and available to both issuers and users of the Conflict Minerals Reports.

If the conformity of an issuer’s due diligence is the subject matter of the audit, reference might be made to the due diligence guidance issued by the Organisation for Economic Cooperation and Development (the OECD). The OECD document “OECD Due Diligence Guidance for responsible supply chains for minerals from conflict-affected and high-risk areas” has now been finalized; however, it does not cover all of the minerals identified in the proposing release. The supplement for gold is expected to be issued later in 2011. The OECD Guidance appears to be the most standardized criteria for evaluating due diligence procedures, however, that guidance also indicates that due diligence in conflict-affected and high risk areas presents practical challenges and that flexibility is needed in the application of due diligence. This flexibility may not permit consistent assessment of the subject matter.

If the Commission intends that issuers should have flexibility in applying due diligence procedures, we recommend that this be clearly indicated in any final rule. The OECD Guidance, the related gold supplement or any other standard for due diligence would need to be evaluated to determine if they are suitable criteria for the purpose of the audit.

### **Independence**

Although the proposed rule is silent on independence, we recommend that the SEC clarify the particular independence standards to which the independent private sector auditor will be subject. For instance, we note that GAGAS includes independence

standards that generally extend beyond those required by the SEC's independence requirements. This is particularly true with respect to performing and documenting non-attest services performed by the auditor. Clarifying the relevant independence standards applicable in these engagements will avoid confusion regarding the level of independence of the third party performing the conflict minerals audit as compared to the independence of the issuer's registered independent public accounting firm. As a fundamental premise, we see no compelling reason for an independent private sector auditor performing a conflict minerals audit to be subject to more (or less) stringent independence criteria than those otherwise imposed by GAGAS (or SEC rules).

The Act specifies that the issuer's Report "shall not satisfy the requirements of the regulations" if the Report itself "relies on a determination of an independent private sector audit," which suggests the issuer must reach its own conclusions in the report which is in turn subject to an independent audit. However, the SEC's proposal states that a certified audit would constitute a "critical component" of the issuer's due diligence in establishing the source and chain of custody of the conflict minerals. This language in the proposing release could cause confusion as to the nature of the engagement and the role of the independent auditor if it is perceived to be a component of management's procedures.

Although the proposing release is silent as to the implications to the issuer's registered independent public accounting firm's independence if that firm also performed the conflict minerals audit, we believe the SEC should make clear that the external financial statement auditor would not be precluded from performing such an engagement.

\*\*\*\*\*

The AICPA appreciates the opportunity to comment and welcomes the opportunity to serve as a resource to the SEC on these issues. If we can be of further assistance, please contact Charles E. Landes, CPA at 202-434-9211.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Coffey". The signature is fluid and cursive, with a large initial "S" and a stylized "Coffey".

Susan S. Coffey, CPA  
AICPA Senior Vice President, Member Quality and International Affairs